FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

March 24, 2004

In Reply Refer To:
Trailblazer Pipeline Company
Docket Nos. RP00-479-003
and RP00-624-003

Trailblazer Pipeline Company
747 East 22nd Street
Lombard, Illinois 60148-5072

Attention: Bruce H. Newsome, Attorney

Reference: Third Order No. 637 Compliance Filing

Ladies and Gentlemen:

1. On May 16, 2003, Trailblazer Pipeline Company (Trailblazer) filed the tariff sheets listed in the Appendices to comply with the Commission's April 16, 2003, Order on Rehearing and Compliance Filing in Trailblazer's Order No. 637 proceeding.[1] The April 16 Order denied Trailblazer's request for rehearing, but provided clarification regarding flexible point rights, discounting, unauthorized overrun charges, and the pipeline's implementation schedule. The April 16 Order conditionally approved Trailblazer's compliance tariff sheets, subject to Trailblazer filing further revisions to become effective May 1, 2003. Trailblazer requests an effective date of May 1, 2003, for the tariff sheets listed in Appendix A. Trailblazer also filed certain pro forma tariff sheets listed in Appendix B.

2. We accept the tariff sheets listed in Appendix A to become effective May 1, 2003, subject to Trailblazer filing the tariff revisions discussed below within 15 days of the date this order issues. Conjunctively, we direct Trailblazer to file actual revised tariff sheets corresponding to the pro forma sheets listed in Appendix B to comply with the April 16 Order and the findings in this order to become effective December 1, 2003. Acceptance of this filing benefits the public by ensuring that Trailblazer's tariff properly implements the Commission's Order No. 637 mandates, which are designed to enhance competition and transportation services in the natural gas industry.

[1] Trailblazer Pipeline Co., 103 FERC ¶ 61,074 (2003) (the April 16 Order).

3. Notices of intervention and unopposed timely filed motions to intervene are granted pursuant to the operation of Rule 214 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.214 (2003)). Any opposed or untimely filed motion to intervene is governed by the provisions of Rule 214. One protest, discussed below, was filed by Indicated Shippers.[2]

4. In general, the April 16 Order found that Trailblazer complied with Order No. 637 related issues regarding scheduling equality, segmentation and change of gas flow, allocation of mainline capacity, secondary point rights, netting and trading, and OFO procedures and penalties. However, the Commission required Trailblazer to further revise its tariff affecting its flexible point rights, discount portability, unauthorized overrun charges, and penalty revenue crediting, as discussed below.

Segmentation – Flexible Point Rights

5. The April 16 Order at P 38-40 required Trailblazer to remove language that: (i) subjects an additional or changed primary point obtained by the releasing or replacement shipper in a segmented transaction to the subsequent award of firm capacity at that point to another original shipper; and (ii) restricts a shipper's request for primary points outside the path. The instant filing removes the objectionable language from the General Terms and Conditions (GT&C) at sections 10.13(f) and 19.5(d)(3). However, Trailblazer's proposed tariff language contains certain terms contrary to Order No. 637.

a. Affiliate Exemption

6. Revised GT&C section 10.13 (f) modifies Trailblazer's Segmentation of Capacity provisions to require:

> . . .any additional segment capacity required shall be subject to the availability of such capacity on a firm basis and to Trailblazer's generally applicable capacity award procedures and that the award of any such capacity shall be limited to the term of the release. <u>Additional primary points may not be designated if a Shipper is releasing to itself or to an affiliate</u>. (emphasis added)

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[2] Indicated Shippers represents BP Energy Company; BP America Production Company; Burlington Oil & Gas Company, LP; ConocoPhillips Company; and ChevronTexaco Natural Gas, a division of Chevron U.S.A. Inc.

According to Trailblazer, the highlighted language excludes from the designation of additional primary points any release by a shipper "to itself or to an affiliate . . . to prevent market manipulation by a shipper or its affiliate artificially taking point capacity off the market when no independent third party is involved in the release."[3]

7. Indicated Shippers object to Trailblazer's proposed tariff language because it bans affiliates from designating additional primary points in a segmented release.

8. We concur with Indicated Shippers. The Commission has allowed Trailblazer to limit the primary points a shipper may reserve to its mainline contract demand. However, consistent with the Texas Eastern/El Paso policy, the Commission requires the pipeline to treat the releasing and replacement shippers as separate shippers with separate contract demands for purposes of this limit, and thus allow each to reserve primary points up to its contract demand, subject to the availability of capacity at the requested point. The Commission permits shippers to release their capacity to affiliates. Affiliated replacement shippers should have the same rights as other replacement shippers, absent a showing that a particular release between affiliates had no legitimate business purpose other than to evade tariff or other requirements that would otherwise apply to the releasing shipper. Trailblazer's proposed blanket prohibition on affiliated replacement shippers obtaining primary points would, in effect, treat all releases to affiliates as sham transactions with no legitimate purpose other than to evade the limit on primary point capacity that each firm shipper can reserve. We find that Trailblazer fails to demonstrate the need to deny all affiliated replacement shippers the primary point rights available to all other replacement shippers and required by our policy.[4] For this reason, we require Trailblazer to remove this restriction from its segmentation tariff provisions. If Trailblazer believes that a particular release transaction between affiliates has an improper purpose it may file a complaint.

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[3] Trailblazer Compliance Filing at page 3.

[4] See Order No. 637-A at ¶ 31,594 (the Commission found that a pipeline's restrictive allocation of primary point rights to existing shippers could impede the shipper's flexibility to use its capacity.) Regulation of Natural Gas Transportation Service and Regulation of Interstate Natural Gas Transportation Services, Order No. 637-A at 31,593, FERC Statutes and Regulations (Preambles) ¶ 31,099, order on reh'g, Order No. 637-B, 92 FERC ¶ 61,062 (2000), aff' in part and remanded in part sub nom., Interstate Natural Gas Association of America v. FERC, 285 F.3d 18 (D.C. Cir 2002), order on remand, 101 FERC ¶ 61,127 (2002).

b. Recall of Capacity

9. Also under revised GT&C Section 10.13 (f), Trailblazer proposes that when the replacement shipper elects to go outside the original primary contract path of the releasing shipper, the original capacity is no longer subject to recall because Trailblazer may have resold firm capacity in the original primary path which is not part of the redesigned primary path for the period of the release. Specifically, the new tariff language reads:

> . . . Where a Replacement Shipper selects primary points which are outside the primary path under the Releasing Shipper's contract (and thus creates a new primary path at least partially outside the original primary path), the Releasing Shipper cannot recall the capacity which it had released; provided that a Releasing Shipper specifying recall rights in a release may include a provision in the release which precludes selection of any primary point by the Replacement Shipper which is outside the original primary path absent the Releasing Shipper's consent.

10. Indicated Shippers request clarification that a shipper can reserve the right to recall capacity even if the replacement shipper changes the primary points.

11. The Commission requires Trailblazer to remove the provision prohibiting recall of capacity, where a replacement shipper selects primary points outside the primary path of the releasing shipper's contract. During the implementation of Order No. 637, the Commission determined that, if a replacement shipper obtains primary points by changing the releasing shipper's primary points, the change is permanent. The pipeline is then free to sell the newly available capacity at the original primary points to new shippers. The Commission found that this policy establishes a reasonable balance between the need to enhance competition by providing replacement shippers with the right to obtain primary points, and the pipeline to market available capacity.[5] Consistent with this policy, if a replacement shipper changes the releasing shipper's primary points and the releasing shipper then recalls its capacity, the recalled capacity will contain the changed primary points, not the releasing shipper's original primary points. However, Trailblazer's proposed tariff language appears to prohibit the releasing shipper from

[5] See e.g., Natural Gas Pipeline Co. of America (NGPL), 103 FERC ¶ 61,174 at P 55 (2003).

making any recall of its capacity, where primary points have been changed. We see no reason for such a blanket prohibition on recall when the replacement shipper changes the primary points in a release. For this reason, we require Trailblazer to remove this restriction from its segmentation tariff provisions.

Discount Portability

12. The April 16 Order at P52-55 required Trailblazer to remove from GT&C section 10.13(g) the language undermining the Commission's rebuttable presumption policy regarding the retention of discounts at alternate points. Specifically, the Commission directed Trailblazer to remove the language that provided that discounts would not apply to segmented capacity if the segmented release was inconsistent with point, volume, or other discount limits under the agreement segmented or released, and replace it with the Commission's rebuttable presumption policy.[6] New Subsection 10.13(g)(1) provides that:

> A Shipper which has a discount under its existing firm Agreement may request that its discount rate and related provisions be applied at an alternate point, if Trailblazer is providing a discount to another Shipper at that alternate point. For purposes hereof, an alternate point means a secondary or segmentation point or an alternate point resulting from capacity release. Where the Shipper makes such a request, a rebuttable presumption applies that the Shipper may apply the applicable discount rate and related rate provisions consistent with subsection (3) of this Section 10.13(g) at the alternate point, unless Trailblazer demonstrates that the Shipper requesting the discount at the alternate point is not similarly situated to the Shipper(s) receiving the discount at the alternate point provided, however, <u>if the Agreement of the Shipper requesting the discount (or related discount agreement) specifies the discounted rate and related rate provisions to be paid at that alternate point, then that Agreement (or related discount agreement) shall control.</u> (Emphasis added)

13. Indicated Shippers object that the underlined language would permit Trailblazer by contract to nullify the ability of a discount rate shipper to retain a discount when the shipper moves to a different receipt or delivery point.

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[6] April 16 Order P 52-55.

14. On February 20, 2004, the United States Court of Appeals for the District of Columbia Circuit issued a decision in Williston Basin Interstate Pipeline Co. v. FERC, Case No. 02-1257, in which it vacated and remanded the Commission's orders in Williston's Order No. 637 proceeding requiring Williston to implement the CIG/Granite State policy. In light of the Court's decision in Williston, the Commission will accept Trailblazer's proposed compliance with the April 16 order in this proceeding, subject to further review following the Commission's order on remand in Williston. In response to Indicated Shippers' concerns that Trailblazer's instant compliance filing does not fully comply with the April 16 order, the Commission notes that any further changes the Commission may require in Trailblazer's General Terms and Conditions on this subject will apply to all its existing contracts. That is because, consistent with Trailblazer's pro forma service agreement, Trailblazer's contracts incorporate the General Terms and Conditions in its tariff as they may be changed from time to time.[7]

Unauthorized Overrun Charges

15. Trailblazer's existing unauthorized overrun penalty, before it filed to comply with Order No. 637, was $10 per Dth. The Commission's October 15, 2001 order in this proceeding found that Trailblazer failed to justify continuing this penalty during non-OFO periods.[8] Accordingly, the Commission ordered Trailblazer to propose a more nominal penalty for non-OFO periods that is sufficient to provide an incentive to nominate overrun volumes but also takes into account the lessened impact such unauthorized overruns will have on its system. Trailblazer then proposed a penalty for unauthorized overruns during normal operating times equal to the higher of $4.00 per Dth or 150% of the average monthly index price (AMIP). Trailblazer also proposed that during a critical time or when and OFO was in effect, the unauthorized overrun charge would be the greater of $10 or 150 percent of the AMIP. The April 26 order, at P 64, found that the proposed penalty for normal operating times was inconstant with Commission policy. The Commission stated that Trailblazer could propose a more nominal penalty for non-critical periods, not to exceed twice its IT rate; or alternatively, Trailblazer could retain its proposed unauthorized overrun penalty but must waive the unauthorized overrun penalty if the unauthorized overrun does not cause operational problems.

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[7] Regulation of Short-Term Natural Gas Transportation Services, and Regulation of Interstate Natural Gas Transportation Services, 101 FERC ¶ 61,127 at P 45-53 (2002).

[8] 97 FERC ¶ 61,056 at 61,306.

16. The instant filing removes the objectionable charges from GT&C section 8 "Overrun Service" under both Rate Schedules FTS and ITS. Instead, Trailblazer proposes the following:

> The maximum Unauthorized Overrun Rate is $10/Dth, which may be discounted to any level between zero and such maximum rate. Any charges for an unauthorized overrun in excess of the Authorized Overrun Charge shall be waived by Trailblazer if the unauthorized overrun does not cause operational problems. If Trailblazer does not waive an Unauthorized Overrun Charge, it will provide a written explanation of the operational problem(s) caused by the overrun upon request from a Shipper subject to the Unauthorized Overrun Charge.

17. Indicated Shippers object to the proposed $10 per Dth charge for critical periods and asks that the Commission require Trailblazer to adopt for critical periods Trailblazer's earlier proposal to assess an overrun penalty equal to the higher of $4 per Dth or 150% of the AMIP.

18. We find that Trailblazer's proposal is consistent with Commission policy. The Commission has given pipelines the option of retaining their existing unauthorized overrun penalties, if they agree to waive that penalty during non-critical periods.[9] Trailblazer's existing unauthorized overrun penalty before compliance with Order No. 637 was $10 per Dth. Thus, under its proposal, it will retain its preexisting penalty, but it agrees to waive the penalty if the unauthorized overrun did not cause operational problems and to provide a written explanation of any denial of the waiver. Accordingly, the Commission accepts Trailblazer's proposal concerning unauthorized overruns.

Penalty Revenue Crediting

19. The April 16 Order at P 69 required Trailblazer to revise its tariff to provide interest for the period penalty revenues are held, since Trailblazer proposes to retain penalty revenues for up to one year.

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[9] Natural Gas Pipeline Co., 101 FERC ¶ 61,200 at P 86 (2002), reh'g, 103 FERC ¶ 61,174 at P 54 (2003) (approving Natural's retention of its existing $10 per Dth unauthorized overrun penalty, upon agreement to waive the penalty during non-critical periods.)

20. Revised GT&C section 40.10, Use of Penalty Funds changes the yearly cash-out of penalty revenues to quarterly disbursement. Further, Trailblazer will allocate and distribute the funds to shippers within 20 days after the end of each quarter, instead of the 90 days after the end of each calendar year previously required. Trailblazer will carry forward any costs incurred in excess of penalty revenue to the next quarter with interest calculated as prescribed in the Commission's regulations at Section 154.501(d)(1).

21. We find that Trailblazer's proposed tariff changes comply with the April 16 Order mandate. Trailblazer must distribute interest on the net penalty revenues calculated from the date it actually receives the penalty revenue to the date of distribution.

Tariff Sheet Effective Dates

22. In the April 16 Order at P 73, the Commission required Trailblazer to file revised tariff sheets to those listed in Appendix B thereto, to reflect the April 16 Order mandates, such sheets to become effective within four months after the Commission's order in either KMI or NGPL, whichever is later. KMI's Order No. 637 compliance proceeding was resolved by Letter Order on November 21, 2003 in Docket Nos. RP00-343-006, et al. KMI's segmentation proposal was accepted effective December 1, 2003. NGPL's Order No. 637 compliance is pending review.

23. By letter dated November 26, 2003, Trailblazer notified the Commission that effective December 1, 2003, operations under its Order No. 637 tariff sheets (using its DARTPlus interactive website shared with the Kinder Morgan pipelines) would commence in tandem with its affiliate pipelines. Therefore, we direct Trailblazer to file actual tariff sheets corresponding to the pro forma tariff sheets listed in Appendix B, revised as necessary to comply with the April 16 Order and this order, to become effective December 1, 2003.

By direction of the Commission.

Magalie R. Salas
Secretary

APPENDIX A

Trailblazer Pipeline Company
FERC Gas Tariff, Third Revised Volume No. 1

Tariff Sheets effective May 1, 2003:

Substitute Third Revised Sheet No. 24
Original Sheet No. 24A
Substitute Third Revised Sheet No. 34
Third Revised Sheet No. 132
First Revised Sheet No. 133
Second Revised Sheet No. 137
Original Sheet No. 137A
Original Sheet No. 208
Original Sheet No. 209
Original Sheet No. 210
Original Sheet No. 211
Original Sheet No. 212
Original Sheet No. 213
Original Sheet No. 214
Original Sheet No. 215
Original Sheet No. 216
Substitute Original Sheet No. 217
Original Sheet No. 218

APPENDIX B

Trailblazer Pipeline Company
FERC Gas Tariff, Third Revised Volume No. 1

List of Pro Forma Tariff Sheets
Filed May 16, 2003

First Revised Sheet No. 126D
Substitute Original Sheet No. 126E
Substitute Original Sheet No. 126F
Substitute Original Sheet No. 126G
2nd Sub Second Revised Sheet No. 154
Sixth Revised Sheet No. 155